

offender by court-martial is evidence for the administrative action, but is not determinative on the issue of responsibility for damages under these regulations.

## PART 756—NONAPPROPRIATED-FUND CLAIMS REGULATIONS

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AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 939, 5013, and 5148; E.O. 11476 (3 CFR, 1969 Comp., p. 132); 32 CFR 700.206 and 700.1202.

SOURCE: 57 FR 4736, Feb. 7, 1992, unless otherwise noted.

### § 756.1 Scope.

This part explains how to settle claims for and against the United States for property damage, personal injury, or death arising out of the operation of nonappropriated-fund instrumentalities.

### § 756.2 Definitions.

(a) *Nonappropriated-fund instrumentality (NAFI)*. An instrumentality of the Federal Government established to generate and administer nonappropriated-funds for programs and services contributing to the mental and physical well-being of Department of Defense personnel and their dependents. A NAFI is not incorporated under the laws of any State and enjoys the privileges and immunities of the Federal Government.

(b) *Nonappropriated-funds*. Funds generated through the use and patronage of NAFI's, not including funds appropriated by Congress.

(c) *Employees of NAFI*. Civilian personnel employed by NAFI's whose salaries are paid from nonappropriated-funds. Also, military personnel working part-time at NAFI's when compensated from nonappropriated-funds.

### § 756.3 Notification.

(a) Some NAFI's, such as flying clubs, carry private commercial insurance to protect them from claims for property damage and personal injury attributable to their operations. The Commandant of the Marine Corps, the Chief of Naval Personnel, and the Commander, Naval Supply Systems Command determine whether NAFI's within their cognizance shall carry liability insurance or become self-insurers, in whole or in part.

(b) The Marine Corps requires mandatory participation in the Morale, Welfare and Recreation (MWR) Composite Insurance Program by the following operations: MWR operations and retail services, food and hospitality, recreation; and special NAFI activities including flying clubs, rod and gun clubs, Interservice Rifle Fund, Marine Corps Marathon and Dependent Cafeteria Fund. The following organizations may also participate in the MWR Composite Insurance Program, if desired: Child welfare centers, billeting funds, chapel funds, and civilian welfare funds.

(c) When the operations of NAFI's result in property damage or personal injury, the insurance carrier, if any, should be given immediate written notification. Notification should not be postponed until a claim is filed. When the activity is self-insured, the self-insurance fund shall be notified of the potential liability by the activity.

### § 756.4 Responsibility.

The primary responsibility for the negotiation and settlement of claims resulting from nonappropriated-fund activities is normally with the NAFI and its insurer. NAFI's, however, are Federal agencies within the meaning of the Federal Tort Claims Act if charged with an essential function of the Department of the Navy and if the degree of control and supervision by the Navy is more than casual or perfunctory. Compare *United States v. Holcombe*, 277 F.2d 143 (4th Cir. 1960) and *Scott v. United States*, 226 F. Supp. 846, (D. Ga. 1963). Consequently, to the extent sovereign immunity is waived by the Federal Tort Claims Act, 28 U.S.C. 1346(b), 2671-2672, 2674-2680, the United States remains ultimately liable for payment of NAFI claims.